

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

JACQUELYN ORR and WILLIAM ORR, )	
Plaintiffs, )	CIVIL ACTION NO.
vs. )	416-52
MACY'S RETAIL HOLDINGS, INC., )	
Defendant. )	

- - -

Deposition of L. LAMAR BLOUNT, CPA/CFF,  
FHFMA, taken on behalf of the Plaintiffs,  
pursuant to Notice, in accordance with the  
Federal Rules of Civil Procedure, before Louise  
Nielson, Certified Court Reporter, at 555 North  
Point Center East, Suite 403, Alpharetta,  
Georgia, on the 19th day of September, 2016,  
commencing at the hour of 9:05 a.m.

1 APPEARANCES OF COUNSEL:

2 ON BEHALF OF THE PLAINTIFFS:

3 R. SCOT KRAEUTER, ESQ.  
4 Johnson, Kraeuter & Dunn, LLC  
5 104 West State Street  
6 Suite 200  
7 Savannah, GA 31401

8 ON BEHALF OF THE DEFENDANT:

9 LISA R. RICHARDSON, ESQ.  
10 Drew Eckl & Farnham, LLP  
11 880 West Peachtree Street, N.W.  
12 Atlanta, GA 30308  
13 - - -

14 (Whereupon, disclosure as required by the  
15 Georgia Board of Court Reporting was made by the  
16 court reporter, a written copy of which is  
17 attached hereto.)  
18  
19  
20  
21  
22  
23  
24  
25

1 MR. KRAEUTER: This will be the deposition  
2 of L. Lamar Blount, CPA/CFF, FHFMA taken  
3 pursuant to notice and agreement of counsel. I  
4 would propose that we stipulate to the time,  
5 method and manner of the taking of the  
6 deposition as well as our court reporter's  
7 qualifications, if that's agreeable.

8 MS. RICHARDSON: It's agreeable.

9 MR. KRAEUTER: All right. And I would  
10 propose that we reserve objections except as to  
11 the form of the question and the responsiveness  
12 of the answer until such time as first use.

13 MS. RICHARDSON: That's fine.

14 MR. KRAEUTER: Okay. Anything else to put  
15 on the record?

16 MS. RICHARDSON: I don't think so.

17 MR. KRAEUTER: All right. Why don't we  
18 swear the witness, please.

19 L. LAMAR BLOUNT, CPA/CFF, FHFMA,  
20 having been first duly sworn, was examined and testified  
21 as follows:

22 CROSS-EXAMINATION

23 BY Mr. Kraeuter:

24 Q Mr. Blount, my name is Scot Kraeuter. I'm  
25 going to ask you some questions today. If I ask you

1 a question that you do not understand or you find  
2 confusing in any way, will you let me know, please?

3 A Yes, I will.

4 Q All right. Now, we had with your  
5 deposition notice served a notice to produce asking  
6 you to bring to the deposition in paper form a number  
7 of documents.

8 A It didn't say paper --

9 Q Do you have that information?

10 A It didn't say paper form.

11 Q Yes, it did, sir. It said "in paper form."

12 A Well, I don't keep --

13 Q I'm looking, I'm looking at the notice,  
14 sir. It said, "in paper form."

15 MS. RICHARDSON: It does.

16 THE WITNESS: Well, I'm not going to print  
17 it out. I brought, I brought my electronic file  
18 of my electronic records.

19 MR. KRAEUTER: All right. Lisa?

20 THE WITNESS: I brought paper records of my  
21 paper records.

22 MR. KRAEUTER: Lisa?

23 MS. RICHARDSON: Yes.

24 MR. KRAEUTER: I would like the materials  
25 in paper form, please, as the notice required.

1 And there's been no objection to the notice.

2 MS. RICHARDSON: How much is on there?

3 THE WITNESS: I don't know.

4 MS. RICHARDSON: Do we have -- can we print  
5 something out here?

6 THE REPORTER: I have no idea.

7 MS. RICHARDSON: Okay. Let's see if we can  
8 get it printed here.

9 MR. KRAEUTER: Okay.

10 MS. RICHARDSON: I mean, I don't know how  
11 much is on there or whether it's even feasible  
12 to print, but --

13 MR. KRAEUTER: Well, let's see. But I  
14 don't want to, I don't want to lose time in this  
15 deposition because the witness didn't comply  
16 with the notice.

17 MS. RICHARDSON: Sure. Let's see.

18 Okay. Let's go off for a second.

19 MR. KRAEUTER: Okay.

20 (Whereupon, a brief recess was taken.)

21 Q (By Mr. Kraeuter) Okay. I think when we left  
22 off, Mr. Blount, we were talking about documents that  
23 you were to bring to the deposition.

24 A Yes.

25 Q There was an issue in that you brought a

1 number of documents on a thumb drive of some kind,  
2 but those are now being e-mailed to the office where  
3 the deposition's being taken; is that correct?

4 A Yes.

5 Q Okay. And they're being printed out; is  
6 that correct?

7 A That's what I understand.

8 Q Okay. All right. Now, let's go through  
9 the materials that you brought with you or are being  
10 sent in, if we could.

11 A Okay.

12 Q If you look at your deposition notice, we  
13 were asking for your entire file in this case. Did  
14 you bring your entire file between what's being sent  
15 in and what's in front of you right now?

16 A As far as I know.

17 Q Okay. A copy of all communications,  
18 whether written, electronic, or otherwise -- received  
19 or reviewed by you relating to the case. Did you  
20 bring that?

21 A I don't think that's on the thumb drive.

22 MS. RICHARDSON: What?

23 Q (By Mr. Kraeuter) Sir?

24 A The thumb drive does -- I inadvertently did  
25 not put on there the Outlook files.

1 MS. RICHARDSON: Are there any, are there  
2 any written communications with us?

3 THE WITNESS: Written communications?

4 MS. RICHARDSON: Yeah.

5 THE WITNESS: No. I thought, I thought you  
6 were asking about e-mail.

7 MS. RICHARDSON: Do we even have --

8 MR. KRAEUTER: Yes.

9 MS. RICHARDSON: -- e-mails?

10 MR. KRAEUTER: E-mail.

11 THE WITNESS: I did not put the e-mail on  
12 thumb drive by oversight. I intended to, but --

13 Q (By Mr. Kraeuter) All right. Mr. Blount --

14 A -- I'll be glad to send it to you.

15 Q -- how do we get those documents?

16 A Well, you can, you know, look up my Outlook  
17 file. I could send you the Outlook file.

18 MS. RICHARDSON: Are they just e-mails with  
19 us?

20 THE WITNESS: No. It's also e-mails with  
21 the people that work with me on the case.

22 MS. RICHARDSON: Ahh. Okay.

23 MR. KRAEUTER: Yeah. Lisa, how are we  
24 going to get those?

25 MS. RICHARDSON: Well, Scot, I mean, the

1           ones with our office to the extent that they're  
2           discoverable -- and under the new rules they're  
3           not all discoverable -- I can pull them and have  
4           someone send them. But his office -- is there  
5           someone at your office who can pull your  
6           Outlook?

7           THE WITNESS: (Witness shakes head.)

8           MS. RICHARDSON: Okay.

9           THE WITNESS: Sorry.

10          MS. RICHARDSON: Well, let's --

11          MR. KRAEUTER: Lisa, I would agree that an  
12          e-mail between your office and Mr. Blount about,  
13          you know, drafting his report and drafts of his  
14          report is not discoverable, I agree with that,  
15          but anything else is.

16          MS. RICHARDSON: I'm not arguing that's  
17          it's not. What I'm saying is I can get my  
18          office to send our e-mails, but he's got e-mails  
19          with his people that I obviously don't have  
20          access to. So we can do one of two things: We  
21          can stop the deposition and go get them, or we  
22          can get them to you and we can reconvene the  
23          deposition if you feel the need to ask questions  
24          about them at a later date.

25          MR. KRAEUTER: Yeah. Let's, you know, get



1           them to me. I don't want to slow down today. I  
2           want to keep moving and get as much done as we  
3           can.

4           MS. RICHARDSON: So get them and we can  
5           reconvene if you want to. Is that what you're  
6           saying?

7           MR. KRAEUTER: Yes.

8           MS. RICHARDSON: Okay.

9           MR. KRAEUTER: Sure.

10          MS. RICHARDSON: Okay. That's fine.

11          THE WITNESS: I'll get them sent down to  
12          you --

13          MS. RICHARDSON: Sure.

14          THE WITNESS: -- this afternoon.

15          MS. RICHARDSON: That's fine. Okay.

16          Q        (By Mr. Kraeuter) The next category is a copy  
17          of all reports prepared by you or received by you which  
18          relate in any way to the facts of this case. Do we  
19          have all those documents?

20          A        Yes.

21          Q        Okay. And the next category is all  
22          documents and records reviewed by you or considered  
23          by you in conjunction with this case. Do we have  
24          those documents?

25          A        As far as I know.

1           Q     The next category is "all documents and  
2 records reviewed by you or considered by you in  
3 preparation for this deposition." Do we have all  
4 those documents?

5           A     As far as I know, yes.

6           Q     All right. The next category is, "The  
7 results of all research done by you or for you  
8 relative to this case." Do we have those documents?

9           A     I believe so.

10          Q     And the next category is "an up-to-date  
11 resumé." Do we have that?

12          A     Yes. There's been no change since the  
13 report.

14          Q     Okay. The next category is all notes,  
15 records or other materials maintained by you on  
16 computer or other electronic means related to  
17 Jacquelyn Orr, Macy's Retail Holding, or the incident  
18 that is the subject of this lawsuit. Do we have all  
19 those documents?

20          A     Yes. That's on the thumb drive being  
21 printed out.

22          Q     Okay. The next category is a copy of all  
23 communications, whether written, electronic or  
24 otherwise, sent or received from any attorney or  
25 staff member of Drew Eckl & Farnham.

1 And I think we've covered that Lisa,  
2 correct?

3 MS. RICHARDSON: Yes.

4 MR. KRAEUTER: Okay.

5 Q (By Mr. Kraeuter) The next is all billing  
6 information, including engagement letters, invoices,  
7 and payments regarding Macy's Retail Holding and Drew  
8 Eckl & Farnham. Do we have those documents?

9 A Yes. That's in the admin folder.

10 Q All right. K, a list of all -- let's see.  
11 "A list of all cases in which you've testified at  
12 trial or in deposition for the last five years." Do  
13 we have an updated list on that?

14 A I think there's only one case maybe since  
15 the one that's listed in the report. I had a  
16 deposition I believe last week that I've not put on  
17 the list yet.

18 Q And what case is that, sir?

19 A Hang on just a minute. Let me see if I can  
20 find that.

21 MS. RICHARDSON: Hang on just one second,  
22 Scot.

23 (Whereupon, a brief recess was taken.)

24 THE WITNESS: Okay. Back to -- hang on  
25 just a minute. I got that.

1 MS. RICHARDSON: Sure.

2 THE WITNESS: May have that here.

3 Okay. The case was Kimberly Blackmon,  
4 B-L-A-C-K-M-O-N, versus Timothy Hairstin,  
5 H-A-I-R-S-T-I-N, and Hobart Corporation,  
6 H-O-B-A-R-T, in Clayton -- State Court in  
7 Clayton County. I testified in an August  
8 deposition on my expert report regarding proper  
9 billing and reasonable charges for ambulatory  
10 surgery center and professional fees. And I was  
11 engaged by Nikolai Makarenko, M-A-K-A-R-E-N-K-O,  
12 with Groth & Makarenko in Suwanee, Georgia. So  
13 that case -- that testimony is not on the list  
14 that's contained in Appendix B in the expert  
15 report for this case.

16 Q (By Mr. Kraeuter) And who was opposing  
17 counsel on that case? Who was the plaintiff's lawyer?

18 A I don't know.

19 Q Okay. All right. The last category of  
20 documents is a list of all case in which you've been  
21 retained by Drew Eckl & Farnham, LLP. Do you have  
22 that, sir?

23 A I apologize. I just got back from a week  
24 in Canada Sunday afternoon and just -- I thought this  
25 stuff was ready to go, and it's not. Let's see.

1 Drew Eckl & Farnham.

2 Q And I'm not talking, Mr. Blount, about  
3 testifying in deposition or trial.

4 A I understand.

5 Q I'm talking much more broader than it.  
6 Just being retained.

7 A I think there's one other case. Let me see  
8 if I can find it. Just one second.

9 Okay. Last year I was retained by Drew  
10 Eckl & Farnham -- oh, I'm sorry. That's not --  
11 that's another Drew. Sorry.

12 All right. Just -- I think it seems like  
13 there is another case, but I don't see it on my list  
14 right now.

15 MS. RICHARDSON: It would probably be with  
16 Jeff Ward.

17 THE WITNESS: Yes.

18 MS. RICHARDSON: Can you search Jeff Ward?

19 THE WITNESS: Yes. Let me. Okay. That's  
20 good.

21 MR. KRAEUTER: What was the case, Lisa?

22 MS. RICHARDSON: I said it was probably  
23 with Jeff Ward. I suggested he search Jeff  
24 Ward's name.

25 MR. KRAEUTER: Thank you.

1 MS. RICHARDSON: He's going to do that.

2 THE WITNESS: I've got other Wards in here  
3 too. I'm sorry.

4 All right. I don't see it on my cumulative  
5 list, but I know there was -- there has been  
6 another case. So it's just not posted to that  
7 listing. Let me look here in my Outlook.

8 Okay. Yes. The case was Huntoon versus  
9 Wal-Mart.

10 Q (By Mr. Kraeuter) And what court was it  
11 pending in?

12 A It doesn't say in the engagement letter.  
13 Let me see if I can -- just a minute -- if I can find  
14 an e-mail that might have a document in there with  
15 it.

16 Here it is; the report. That's the  
17 outline. Just one moment.

18 Okay. I think I found the full text of the  
19 report. Okay. This was in -- this was Case Number  
20 4:15-CV-00319 in U.S. District Court for the Southern  
21 District of Georgia, Savannah division. Vivian --

22 Q And what was the name of the plaintiff?

23 A Vivian Huntoon, H-U-N-T-O-O-N, versus  
24 Wal-Mart Stores, Inc. That was back in -- the report  
25 was issued April 2nd, 2016. As far as I can recall,

1 that's the only other engagement that I've had with  
2 Drew Eckl & Farnham.

3 Q Okay. Now, Mr. Blount, are all of your  
4 opinions contained in your expert witness report?

5 A All of those that I've expressed.

6 Q Well, do you have any other opinions in  
7 this case that are not expressed in that report?

8 A If asked, I might have an opinion. I don't  
9 know.

10 Q All right.

11 A But all the opinions that I've expressed  
12 are in the report.

13 Q All right.

14 A I may be asked to express other opinions.  
15 You may ask me to express an opinion, and Drew Eckl &  
16 Farnham may ask me to express an opinion. The judge  
17 could ask me to express an opinion.

18 Q Do you have any more work to do in this  
19 case?

20 A Not that I've been asked to do.

21 Q Okay.

22 MS. RICHARDSON: Hey, Scot. This woman  
23 just walked in with some printed stuff. Can we  
24 stop for a second and let him look at it? I'm  
25 not sure this is everything, but I want him to

1 check.

2 THE WITNESS: Oh, no.

3 MR. KRAEUTER: Sure.

4 MS. RICHARDSON: That's not it?

5 THE WITNESS: There were --

6 MS. RICHARDSON: I didn't think this could  
7 possibly be it.

8 THE WITNESS: There was, like, 20 or more.

9 MS. RICHARDSON: Okay.

10 THE WITNESS: All right. Let me show you  
11 the Word document. I mean the --

12 MS. RICHARDSON: Let's take a break, Scot,  
13 and let him go show her what's on here.

14 (Whereupon, a brief recess was taken.)

15 Q (By Mr. Kraeuter) Now, Mr. Blount, can we  
16 agree that there is no definitive book, treatise, or  
17 publication that says doctors and ambulatory surgical  
18 centers must follow either Medicaid, Medicare, VA,  
19 Physicians Fee Reference usual, customary, and  
20 reasonable databases in setting their fees?

21 A Yes.

22 Q Okay. Now, you used to work with a  
23 gentleman by the name of Curt Udell; is that correct?

24 A I still do.

25 Q You still do.



1                   Okay. And he works in your company; is  
2   that correct?

3           A     No. He's an independent contractor.

4           Q     Okay. Was there a time when he worked in  
5   the same company as you did?

6           A     Yes.

7           Q     And what company was that, sir?

8           A     Healthcare Management Advisors.

9           Q     And were you the owner of that company?

10          A     Most of the time.

11          Q     Okay. Was Mr. Udell an owner of the  
12   company?

13          A     No.

14          Q     Okay. He was an employee?

15          A     Yes.

16          Q     How long did he work for you at that  
17   company?

18          A     I don't recall.

19          Q     A number of years?

20          A     Yes.

21          Q     Okay. And you said you still work with him  
22   now?

23          A     I don't know if he's current -- I think he  
24   is currently working on a project for me, yes, right  
25   now.

1 Q Okay. So you --

2 A Maybe not right now this minute, but he is  
3 currently engaged to perform some professional tasks.

4 Q Okay. So from time to time you still hire  
5 him as an independent contractor to work with you on  
6 certain matters that you and your company handle; is  
7 that fair?

8 A Correct.

9 Q Okay. Now, were you aware that Mr. Udell  
10 had a methodology of coming up with the  
11 reasonableness of medical bills by looking at the  
12 Medicare rate and multiplying it by 2.5 times?

13 A He has used that method. Yes.

14 Q Okay. And do you have an opinion as to  
15 whether that's an appropriate method to determine  
16 reasonableness of medical bills?

17 A It could be. I mean, it is used  
18 frequently. It's not the method that I typically  
19 use, though.

20 Q Who else uses that method?

21 A I've seen other expert reports I believe  
22 that have used that methodology, but I don't recall  
23 their names right now.

24 Q And why would that methodology be used to  
25 look at the Medicare rate and multiply it by 2.5

1 percent? Or, excuse me, not 2.5 percent, but 2 and a  
2 half times the Medicare rate.

3 A Because a lot of physicians use that  
4 formula to establish their fee schedule.

5 Q To establish their fee schedule?

6 A Yes.

7 Q Okay. And so we can agree, Mr. Blount,  
8 that there are other ways of determining the  
9 reasonableness of future medical bills other than the  
10 way you did in this particular case; is that correct?

11 A Yes.

12 Q And so I guess another way to say it is:  
13 Your way of determining the reasonableness of medical  
14 bills in this case is not the only way?

15 A Well, if you'll look at our report, I  
16 didn't use one way. I cited multiple sources and  
17 methodologies to evaluate the reasonableness.

18 Q I understand. But can we agree on that  
19 statement that the way that you did it is not the  
20 only way to determine reasonableness of medical  
21 bills?

22 A Well, you should say way with a plural; the  
23 ways that I did it.

24 Q Mm-hmm. Okay.

25 A I did it multiple ways.

1           Q     So can we agree that there are different  
2     ways to determine the reasonableness of medical bills  
3     other than the ways that you did?

4           A     Yes.

5           Q     All right. Let me have you take a look at  
6     Exhibit 69, please.

7                   MS. RICHARDSON: It's going to be in this  
8     stack.

9                   THE WITNESS: Oh, okay. It's at the top.  
10    I'm sorry. I was flipping. Yes.

11          Q     (By Mr. Krauter) Okay. This is an excerpt  
12    from the book that you wrote; is that correct?

13          A     From one of the two books.

14          Q     Okay. This is the third edition. That's  
15    the last book that you're credited on; is that  
16    correct?

17          A     Correct.

18          Q     Okay. There's been a fourth edition, but  
19    you didn't receive credit for that publication; is  
20    that fair?

21          A     That's correct.

22          Q     Okay. And in your book you talk about the  
23    usual, customary, and reasonable method of coming up  
24    with medical fees?

25          A     Yes.

1           Q     Okay. And you say in there, "Historically,  
2     commercial and Blue Shield plans have based provider  
3     payments on the lowest of the following." And then  
4     you kind of go through the category. "The provider's  
5     most frequent charge"; that's usual. "The average  
6     charge by providers in the area"; that's customary.  
7     And "the actual charge appearing on the claim for the  
8     services"; that's the reasonable part. Do you see  
9     that, sir?

10          A     Yes.

11          Q     So when you talk about usual, customary,  
12     reasonable, that's the methodology you're talking  
13     about; is that fair?

14          A     At that time, yes.

15          Q     Has that changed since your third edition  
16     was published?

17          A     Well, the UCR that's referred to in my  
18     report in this case refers to the UCR data contained  
19     in the published sources that we cite in the report.

20          Q     Okay. The customary portion of that UCR  
21     data, is that still the average charge by providers  
22     in the area?

23          A     Some payors do use that definition.

24          Q     Okay. So under that definition, half of  
25     the charges in an area are higher than the UCR

1 charge, if you look at averages?

2 A Yes.

3 Q Okay.

4 A That's not the, that's not the -- that's  
5 not how the data sources that we used in this report  
6 are derived.

7 Q All right. How do the data sources you  
8 used in this case define what's customary?

9 A I'm not sure if they have a specific  
10 definition for "customary." They have tables of data  
11 that contain the charges at the 50th percentile, the  
12 75th percentile, and the 90th percentile. So  
13 there --

14 Q And you're referring to -- go ahead.

15 A So there -- in those publications, there  
16 are no averages that are reported.

17 Q Okay. When we talk about those  
18 percentiles, those come out of PMIC book?

19 A And PFR.

20 Q Okay. Do you know how the data that you  
21 used defined "usual"?

22 A Not off the top of my head. I don't know  
23 if they did define "usual."

24 Q All right. Do you know how the data that  
25 you used in this case defined "reasonable"?

1           A     Not off the top of my head. I don't know  
2     if they defined it.

3           Q     Okay.

4           A     I could look it up.

5           Q     All right. So you don't know the  
6     methodology behind these data -- this data that you  
7     used, the methodology that the providers in the data  
8     used to come up with usual, customary, reasonable  
9     charges?

10          A     I know how they came up with the 50th,  
11     75th, and 90th percentiles.

12          Q     I understand.

13                 My question was how they came up with the  
14     usual, customary, and reasonable charges. You don't  
15     know the methodology that was used in the underlying  
16     data?

17          A     I think I do. Yes.

18          Q     Please tell me it.

19          A     They obtain charges for -- by CPT code from  
20     all the sources that they use. And they array those  
21     charges by CPT code from low to high, or high to low.  
22     And then they count down to the 75th -- the 90th, the  
23     75th, and 50th percentile points in that array, and  
24     those are the numbers that are published in their  
25     data.

1           Q     And where did you get that information that  
2     that is the methodology that was used?

3           A     From their publications.

4           Q     Now, you referred to CPT codes. And CPT  
5     stands for Current Procedure Terminology; is that  
6     correct?

7           A     That's correct.

8           Q     And the purpose of a CPT code is to  
9     identify and differentiate the various medical  
10    procedures?

11          A     Yes.

12          Q     And in and of itself has nothing to do with  
13    the charges for a particular medical procedure?

14          A     Well, it -- it's the, it's the numerical  
15    equivalent of the definition -- or description of the  
16    service that's being billed.

17          Q     Right.

18                But the AMA book on CPT does not reference  
19    a charge or a fee next to it, does it?

20          A     No. It has no charge values in there.

21          Q     Okay. Now, tell me all the cases you've  
22    been an expert in where the court has either limited  
23    or prohibited your testimony.

24          A     In -- there was a case here in Atlanta, a  
25    malpractice case, where my testimony was excluded



1 because it -- I think the judge basically determined  
2 that it was irrelevant to the malpractice issue  
3 because my deposition testimony dealt with how the  
4 physician had collected an amount in excess of what  
5 Medicare would allow. That was -- let me look back  
6 at my list here, my testimony. It's on the list  
7 there. It's on Appendix B. And that would be  
8 Santrell Bell versus Burroughs and the Georgia Center  
9 for Bariatric Surgery.

10 Q It's on the bottom of the first page, sir?

11 A Yes.

12 Q Okay. Any other cases your testimony has  
13 either been excluded or limited?

14 A It was limited in another case where I  
15 test -- yeah. Same thing -- where I testified. It's  
16 on the list here. Just a minute and I'll find it.  
17 Glenwood Systems versus Augment Technology Solutions  
18 in two thousand --

19 Q Okay. That was the one out in California?

20 A Yes.

21 Q Okay. And was your testimony excluded, or  
22 limited in that case?

23 A Limited.

24 Q Okay. And how was it limited?

25 A I think the judge ruled in response to a

1 motion in limine to -- that he was not going to allow  
2 me to state a legal conclusion that was contained in  
3 my expert written report.

4 Q And what conclusion was that, sir?

5 A That I had not seen any evidence that the  
6 defendants had used any proprietary information in  
7 their activity.

8 Q Okay. Any other cases where your  
9 testimony's been limited or excluded?

10 A Hang on here. Let me look for another  
11 couple here. Just a minute and I'll tell you.

12 There was a case in Texas before the Texas  
13 Medical Board administrative law judges, I think,  
14 several years ago. Let me see if it's here in my  
15 list. Yes; in -- on the second page of Appendix B.  
16 In the matter against --

17 Q In the matter of --

18 A -- Reginald --

19 Q -- Reginald Buford?

20 A Correct.

21 Q Okay.

22 A I was not allowed to testify about some CPT  
23 coding rules and was limited to testifying about the  
24 reasonableness of the charges.

25 Q What specifically were you not allowed to

1     testify about regarding CPT codes?

2           A     I think it was the, the parts of the  
3     report -- we had issued a joint report in that case.  
4     I had signed it as well as Dorothy Steed, one of my  
5     senior CPT consultants. And she was not present at  
6     the hearing and the defense counsel objected to me  
7     citing any of the parts of the report that she had  
8     been responsible for.

9           Q     Okay. Any other case your testimony has  
10    been limited or excluded in?

11          A     Not that I can recall right now.

12          Q     All right. Well, let's talk about the  
13    Goldman case. Do you remember that case?

14          A     No. Tell me about it.

15          Q     That was, that was the one up in  
16    Philadelphia.

17          A     Goldman. Oh, was that -- Philadelphia.

18          Q     Eugene Goldman, M.D.

19          A     Oh. Was that the hospice director?

20          Q     That's right.

21          A     Okay. Yes. I remember that.

22          Q     That was --

23          A     Yes.

24          Q     That was the case where the federal  
25    government indicted Dr. Goldman for illegally

1 receiving kickbacks?

2 A Yes.

3 Q And you were scheduled to testify in that  
4 case?

5 A Correct.

6 Q And your testimony was excluded in that  
7 case; is that correct?

8 A Well, basically I, I was asked on, like, a  
9 Thursday before the Monday hearing if I could help  
10 the defense counsel in establishing what the typical  
11 salary was for a hospice medical director. And I  
12 explained to him that that's not my area of  
13 expertise, but he asked if I could still do the  
14 research and come to Philadelphia to attempt to get  
15 that into the record.

16 Q Okay.

17 A So --

18 Q So you agreed to, you agreed to serve as an  
19 expert for Dr. Goldman; is that correct?

20 A Yes. I --

21 Q Okay.

22 A Well, I agreed to do the research on what  
23 the typical medical director compensation was for a  
24 hospice of that size, and to be in Philadelphia at  
25 the courthouse available to testify. I don't know

1 whether the intent was to present me as a fact  
2 witness or as an expert. But I went to the hearing,  
3 went to the trial, and before the jury was called in  
4 the assistant U.S. attorney in the voir dire process  
5 asked me if I was an expert in physician compensation  
6 or medical director compensation.

7 And I answered, no, I was not, but that I  
8 had reviewed the reasonableness of compensation  
9 amounts for multiple physicians and executive  
10 positions within Medicare-certified facilities as  
11 part of the work that I had done over the past  
12 30-plus years with Medicare cost reports and related  
13 appeals. And the judge basically said that he did  
14 not see that I would need to testify, and he excused  
15 me.

16 Q All right. So let's be clear whether you  
17 were going to be testifying as an expert witness in  
18 the criminal case of Dr. Goldman or as a fact witness  
19 in the criminal case of Dr. Goldman. You agreed to  
20 testify on his behalf. Is that true?

21 A Yes, I did.

22 Q Okay. But you did not actually testify  
23 because the court did not allow your testimony; is  
24 that correct?

25 A Yes.

1           Q     Okay. And were you aware that Dr. Goldman  
2 was found guilty in that case?

3           A     Yes.

4           Q     And that he received 51 months in federal  
5 penitentiary for cheating the taxpayers?

6           A     No. I did not know the sentence.

7           Q     Not aware of that? Okay.

8           A     No.

9           Q     Now, I understand that you advertise in --  
10 on a website called ExpertPages?

11          A     Yes. I think that's one of the listings  
12 that we have.

13          Q     As well as Martindale-Hubbell, which is  
14 also an internet listing; is that correct?

15          A     I don't know if I pay anything to  
16 Martindale-Hubbell. I'd have to look and see. There  
17 is about five or six listings that we pay a couple of  
18 hundred dollars to a year for listings.

19          Q     You are listed on a, on a site called ALS;  
20 is that correct?

21          A     I think so.

22          Q     What's, what's ALS stand for?

23          A     I don't know.

24          Q     You're also listed on a website called  
25 Insurance Pro, correct?

1           A     I don't know. I don't recall that one.

2           Q     Okay. What others do you recall? You said  
3     there is five or six different expert listing sites  
4     that you advertise on so that you can get business.

5           A     Well, most of our business comes through  
6     Google searches from what I can tell, but the  
7     listings that I can recall right now would be  
8     Experts.com, ExpertPages. Those are the only other  
9     two I can think of off the top of my head.

10          Q     Okay. Let's take a look at Exhibit 70,  
11     please, sir.

12          A     Okay.

13          Q     Is this your listing that you have in  
14     ExpertPages.com?

15          A     It looks like it.

16          Q     Why don't you take a look at it and let me  
17     know if that's the case.

18          A     I know there's quite a few pages here. I'd  
19     have to go to the website and compare it, but I trust  
20     that you extracted it properly.

21          Q     Well, take your time and look at it, sir.

22          A     I've looked at it.

23          Q     Tell me if this looks like your web page.

24          A     It does not look like my web page.

25          Q     Doesn't look like your listing on

1 ExpertPages.com?

2 A That's a different question.

3 Q That's the question I'm asking right now,  
4 sir.

5 A Well, previously you asked me does this  
6 look like my web page. My answer to that was "no."

7 Q And, sir, I asked --

8 A If the question is --

9 Q Sir, and I asked a follow-up question. And  
10 I would like you to answer the follow-up question,  
11 please.

12 A Which is?

13 Q Is this your listing on ExpertPages.com?

14 A It looks like it.

15 Q Okay. Let's go to the second page, please,  
16 sir. About the middle of the page there is an entry  
17 that says, "representative engagements." Do you see  
18 that, sir?

19 A Yes.

20 Q Okay. And below it there appear to be a  
21 number of sentences that appear to be your  
22 representative engagements; is that correct?

23 A Correct.

24 Q And are these representative engagements  
25 accurate?



1           A     As far as I know.

2           Q     Did you have to fill out some documents or  
3     some information for ExpertPages.com to list your  
4     representative engagements?

5           A     I believe so.

6           Q     Okay. And you checked over what was sent  
7     to ExpertPages.com to make sure it was accurate  
8     before it went out?

9           A     Yes.

10          Q     Now, let's go to the representative  
11     engagement that's second from the bottom. Do you see  
12     that?

13          A     Yes.

14          Q     All right. And tell me what that  
15     representative engagement is, sir.

16          A     You mean read you the description?

17          Q     Sure.

18          A     "Developed proforma detailed hospital and  
19     physician bill totaling over a million dollars for an  
20     attorney representing a burn victim treated by a  
21     hospital that does not charge for its services."

22          Q     Okay. Tell me what that case was about,  
23     sir.

24          A     Okay. Just one second.

25                 Name of the case is Sanders versus South

1 Louisiana Electric Cooperative Association. It's a  
2 medical damages case in Houma, Louisiana. I was  
3 engaged in 2006 by William S. Bordelon with Bordelon  
4 & Shea in Houma, Louisiana on behalf of the  
5 plaintiff. The case settled after my expert report  
6 on the proforma amount of expected medical charges  
7 was produced.

8           This case involved a -- I believe a  
9 teenager, maybe 17 or 18 years old, male who was  
10 hunting I believe the day after Thanksgiving. And  
11 while in a wooded area saw a line across the ground  
12 and touched it with the barrel of his shotgun or  
13 rifle and was electrocuted. He was airlifted to, I  
14 believe, the Shriners burn hospital in Houston and  
15 was treated for burns over 70 percent of his body and  
16 in the hospital for about 30-something days and then  
17 rehabilitation, I believe, for another 30 to 60 days.  
18 And we were -- Health Law Network was engaged to take  
19 the medical records in that case and develop a  
20 proforma hospital and rehab services bill, which we  
21 did.

22           Q     Now, you understand that Shriners Hospital  
23 does not charge its patients a penny, correct?

24           A     Thus, the engagement.

25           Q     And that Shriners Hospital keeps its doors

1 open from donations from the public to help people,  
2 children, that have been burned or electrocuted; is  
3 that correct?

4 A That's what I understand.

5 Q Okay. And so, according to Shriners  
6 Hospital, the reasonableness of their medical bills  
7 was zero, correct?

8 A I wouldn't say that. No, I wouldn't.

9 Q You would not?

10 A I don't think Shriners has an opinion on --  
11 they don't have any bills. All they have are medical  
12 records.

13 Q And so what you did in this case in  
14 Louisiana is looked at the medical records, conjured  
15 up what the bills would be if Shriners actually  
16 charged a fee so that plaintiff could recover those  
17 bills as damages in the lawsuit, correct?

18 A No conjuring was involved.

19 Q I see.

20 Everything else is true in that statement,  
21 correct?

22 A What we did was to show what charges would  
23 have been for these services in the normal  
24 environment for a hospital and rehab provider.

25 Q Right.

1 But for the goodness and grace of Shriners  
2 what this kid's medical bills would have been. Fair?

3 A I guess you can say it that way.

4 Q Tell me, sir, how you set your rates.

5 A About every couple of years I get a survey  
6 from -- I think it's ExpertPages on expert fees. And  
7 I basically use that to establish my rates.

8 Q Okay. And you charge \$395 for research,  
9 evaluation, and preparation of reports; is that  
10 correct?

11 A Yes.

12 Q And you charge \$525 for deposition  
13 testimony, trial testimony, plus out-of-pocket travel  
14 costs; is that correct?

15 A Yes.

16 Q Okay. And essentially in looking at  
17 ExpertPages to come up with your rate you're charging  
18 what the market will bear; is that fair?

19 A I don't know. I'm charging a rate that's,  
20 I believe, consistent with the survey results.

21 Q Okay. Do you have a problem with  
22 physicians, hospitals, and ambulatory surgery centers  
23 charging what the market will bear?

24 A I'm not sure what you mean by "a problem."

25 Q Well, do you have an issue or a criticism

1 with that type of fee arrangement?

2 A Not, not in general.

3 Q Okay. Now, did you do all your work on  
4 this case by yourself, or did you have other people  
5 help you?

6 A There were other people involved.

7 Q Who else helped you?

8 A Let's see. It's mentioned in -- it's  
9 described in the report, I believe.

10 Q That would be Dorothy Steed and Jessica  
11 Schmor?

12 A Yes. I believe so.

13 Q And who are they, sir?

14 A Two of the senior consultants that work  
15 with Health Law Network.

16 Q And how much do you pay those folks, sir?

17 A I don't know off the top of my head.

18 Q You don't know what you pay them per hour?

19 A No. I don't recall --

20 Q Do you know --

21 A -- right now.

22 Q Do you know what their salary is?

23 A They don't have a salary. They're paid by  
24 the hour. They're independent contractors.

25 Q Okay. But you have no idea what the hourly

1 rate is?

2 A Well, it's certainly -- it's something less  
3 than what we bill.

4 Q So it wouldn't be 395 for research,  
5 evaluation, and report prep?

6 A No.

7 Q Okay.

8 A That's, that's my personal --

9 Q And --

10 A -- rate.

11 Q Okay. And you said that you would, you  
12 would pay these people less than you charge in this  
13 case. Is that because your company has to make a  
14 profit?

15 A Well, we don't have to, but it is  
16 desirable.

17 Q Okay. I mean, that's, that's why you're in  
18 business. You're working to make a profit, are you  
19 not?

20 A Well, I also enjoy the work.

21 Q I understand.

22 But would you work for free?

23 A I have from time to time.

24 Q Would you work for free on this case?

25 A No.

1           Q     So how much of the work in this particular  
2 case with Jackie Orr was done by these other ladies?

3           A     I would have to go back to the invoices and  
4 see. Just one moment and I'll tell you.

5           MS. RICHARDSON: They're printed out too.

6           THE WITNESS: Okay.

7           MS. RICHARDSON: Some of them.

8           THE WITNESS: I think there's two invoices.

9           MS. RICHARDSON: Is there more? Okay.

10          MR. KRAEUTER: Yeah. Let's see.

11          THE WITNESS: 23. Maybe there wasn't.

12          Maybe there was just that one invoice.

13          Okay. They spent two hours.

14          Q     (By Mr. Kraeuter) And you spent how many  
15 hours, sir?

16          A     13.4.

17          Q     Okay. Now, have you ever submitted the  
18 methodology that you used in this particular case to  
19 come up with the reasonableness of medical bills for  
20 a peer-review study?

21          A     No.

22          Q     Do you know what the rate of error is for  
23 your opinions?

24          A     No. I don't know of any errors.

25          Q     Now, in coming up with your opinion you

1     relied exclusively on data, as you've said; is that  
2     correct?

3             A     Published data..

4             Q     Published data.

5                     And that published data came from the  
6     American Hospital Directory; is that correct?

7             A     That's one source.

8             Q     Okay. U.S. Department of Veterans Affairs;  
9     is that correct?

10            A     Yes.

11            Q     The Physicians' Fee Reference book,  
12     correct?

13            A     Yes.

14            Q     And the Practice Management Information  
15     Corporation medical fees book; is that correct?

16            A     Yes.

17            Q     It's also called the PMIC; is that right?

18            A     Yes.

19            Q     Okay. And what other data did you rely on?

20            A     I believe we also looked at billed charges  
21     to Medicare patients.

22            Q     Medicare. Okay.

23                     Now, if I understand your methodology in  
24     this case correctly, without the data from those  
25     entities we just discussed you would not be able to



1     come up with an opinion on the reasonableness of  
2     medical charges for the different procedures that  
3     Ms. Orr had or will have; is that correct?

4           A     Well, if I didn't have those data points, I  
5     would look for other data points.

6           Q     I understand.

7           A     I would not say that these are the only  
8     possible data points out there, but they're the ones  
9     that I used.

10          Q     Okay. And if we take those away in this  
11     case -- because these are the ones you chose to use,  
12     if we take those away, you don't have a basis for  
13     your opinion; is that fair?

14          A     Well, there was other peer-review research  
15     showing typical charges and costs for this type of  
16     case that you didn't mention earlier.

17          Q     Okay. And that's the --

18          A     So I'd still have that.

19          Q     Okay. And that's the spinal cord  
20     stimulator?

21          A     Spinal cord stimulator research.

22          Q     Okay. Do you have any personal knowledge  
23     of what data Medicare, VA, the American Hospital  
24     Directory, PMIC, and Physicians' Fee Reference  
25     collates?

1           A     Yes.

2           Q     Okay.

3           A     Well, I'm not sure what you mean by  
4     "collate," but I do have a general understanding of  
5     their sources of data.

6           Q     Okay. You have personal knowledge of that,  
7     or has someone told you that?

8           A     Well, I've read that -- read their sources  
9     in their publications. And I've also talked to Russ  
10    Wasserman, I think; one of the publishers at PFR.

11          Q     Have you talked with anyone else at the  
12    other entities that we've discussed?

13          A     I have had discussions with some  
14    representatives from the VA. And I have discussed  
15    sources -- or I've had discussions with American  
16    Hospital Directory staff also.

17          Q     And these discussions with Mr. Wasserman,  
18    the VA representatives, and the American Hospital  
19    Directory representatives, did they regard the CPT  
20    codes for this particular case?

21          A     No.

22          Q     Okay. Do you have any personal knowledge  
23    as to whether these entities keep accurate records?

24          A     Well, the American Hospital Directory  
25    derives their data for the parts that I use from

1 certified Medicare cost reports that require a  
2 certification by an officer of the hospital, so they  
3 are swearing under oath that those are accurate  
4 numbers.

5 Q Is it Medicare that's swearing those  
6 numbers are accurate, or the hospital representative?

7 A The hospital representative.

8 Q Okay. Do you have personal knowledge of  
9 how these entities enter their data?

10 A I'm not sure what you mean by "enter their  
11 data."

12 Q Well, what I understand what you used in  
13 this case was a compilation of data to come up with  
14 your opinion as to the reasonableness of medical  
15 bills in this case. So my question is: Do you have  
16 personal knowledge of how these particular entities  
17 that you relied on enter their data into their  
18 database?

19 A Well, it's not like they're keying in data,  
20 if that's what you mean by "enter their data." They  
21 are acquiring data files from different sources,  
22 including managed care organizations, billing  
23 services, insurance carriers, Medicare, FAIR Health,  
24 Millimn & Associates; you know, multiple data  
25 sources. And I believe that most all of those -- all

1 of that data comes electronically. So if you're  
2 concerned about --

3 Q And somehow -- go ahead.

4 A If you're concerned about a key punch  
5 error, I think that's not likely to occur because  
6 they're not keying in data.

7 Q Well, somehow all of the raw data that  
8 comes in to these various databases has to be put  
9 into the database.

10 A Yes.

11 Q Correct?

12 A That's correct.

13 Q Do you have personal knowledge as to how  
14 that is done?

15 A Not personally. No, I don't.

16 Q Do you have personal knowledge of the rate  
17 of error contained in these databases for these  
18 entities we've talked about: Medicare, the VA,  
19 American Hospital Directory, PMIC, Physicians' Fee  
20 Reference?

21 A No. And I don't know that there are any  
22 errors. I've not seen any evidence of that.

23 Q Have you ever seen the raw data that's used  
24 by these entities to come up with its fee database?

25 A In the past years I have.

1           Q     And how have you seen that and when have  
2     you seen that?

3           A     In, in several past years we actually  
4     purchased the data from CMS.

5           Q     Okay. Is it your testimony that the data  
6     from CMS, the Centers for Medicaid Services, is the  
7     basis for all of these other databases?

8           A     No.

9           Q     Okay. What other raw data is used in these  
10    particular databases of these entities we've been  
11    discussing: Medicare, the VA, American Hospital  
12    Directory, PMIC, Physicians' Fee Reference?

13          A     Well, we mention on page 6 of 10 of my  
14    report, number two, the PMIC database was derived  
15    from over 400 million actual submitted charges  
16    obtained from a variety of sources, including  
17    third-party payors, group practices, clinics,  
18    universities, and practice management system vendors.

19          Q     And you've seen never seen that raw data?

20          A     Not the current data that they have. No.

21          Q     Have you ever seen the raw data --

22          A     Like I --

23          Q     -- that PMIC has used?

24          A     PMIC also uses Medicare-charged data, and I  
25    have seen that raw data; not --

1 Q I'm talking, I'm talking about from  
2 physicians, hospitals, insurance carriers, and other  
3 health care professionals. Have you ever seen that  
4 data?

5 A I have seen third-party payor data. I've  
6 seen group practice data. I've seen clinics charge  
7 data. I've seen universities medical centers charge  
8 data. And I've seen practice management system  
9 charge data.

10 Q And are you --

11 A So I've seen --

12 Q -- are you saying --

13 A -- I've seen examples, I believe, of all of  
14 these.

15 Q All right. Are you saying you've actually  
16 seen the raw data that PMIC uses from those entities?

17 A No. I've seen data that they describe,  
18 though.

19 Q All right. Have you seen data that PMIC  
20 uses that you used in this case; the raw data that  
21 PMIC used that you then derived your opinion from?

22 A No.

23 Q Do you know the sample size for the  
24 Medicare, VA, American Hospital Directory, PMIC, and  
25 Physicians' Fee Reference data?

1           A     Well, some of those may be based upon  
2     samples, but not all.

3           Q     So --

4           A     Many --

5           Q     -- do you know the sample size?

6           A     Many of those are 100 percent sample sizes.

7           Q     I'm sorry, sir?

8           A     Many of those, I believe, are 100 percent  
9     samples.

10          Q     What does that mean, "100 percent samples"?

11          A     That means all of the data.

12          Q     I'm not following what you mean by that,  
13     sir.

14          A     A sample is a subset of the universe.  
15     Universe would be a hundred percent of the data  
16     that's available.

17          Q     So it's your testimony that American  
18     Hospital Directory uses 100 percent of all the  
19     medical billing data available in the United States?

20          A     They use a hundred percent of the data file  
21     that they purchase from CMS which contain --

22          Q     Okay.

23          A     -- which contains all charges for all  
24     hospitals by DRG in instances where 11 or more  
25     patients for that DRG are reported. So it would

1 exclude those DRGs where there are ten or fewer  
2 instances.

3 Q And a DRG is what, sir?

4 A Diagnosis-related group.

5 Q Okay. And the CMS data is what, sir?

6 A The Medicare paid claims file.

7 Q So American Hospital Directory, if I hear  
8 you correctly, is based a hundred percent on the  
9 Medicare information; is that correct?

10 A It's based upon the charges on the Medicare  
11 claims that have been paid.

12 Q Okay. Which is the same as the Medicare  
13 database that you used in this case; is that correct?

14 A It's one of them.

15 Q Okay. So essentially it's one in the same.  
16 When you look at American Hospital Directory, you're  
17 looking at the same data you've already looked at  
18 under Medicare?

19 A Not necessarily. There's also another  
20 database for Medicare that includes all D -- all  
21 charges by DRG for all hospitals, even those that  
22 report less than 11 per DRG. That's available on a  
23 state-by-state basis and nationally.

24 Q Well, let me ask it this way: Is there  
25 anything in the American Hospital Directory data that



1 you couldn't get from Medicare directly?

2 A Yes.

3 Q What?

4 A The identification of the hospitals within  
5 a certain radius of a zip code or a specific  
6 provider. And then there's other non-Medicare data  
7 that's in the AHD database too, like their financial  
8 statements.

9 Q Do you know if any of the data used in this  
10 case from the Medicare, VA, American Hospital  
11 Directory, PMIC, or Physicians' Fee Reference  
12 databases came from the Savannah, Georgia area?

13 A Yes.

14 Q What data?

15 A Hospital charges.

16 Q What database?

17 A The medicare database.

18 Q And what hospital charges came from the  
19 Medicare database?

20 A Just a minute.

21 All hospitals that reported DRG 29 in 2014.

22 Q Can you name those hospitals, please, sir,  
23 that are in the Savannah, Georgia area?

24 A Hang on just a minute. Let me see if  
25 that's in here.

1 I believe that's Memorial University  
2 Medical Center and St. Joseph's Hospital.

3 Q And how many entries did they have,  
4 respectively, under DRG 029?

5 A Just a minute. We actually use two  
6 different DRGs: 029 and 520. For 520 -- just a  
7 minute. Let's see -- Memorial University Medical  
8 Center had 20 cases. Their average charge was  
9 \$25,764. St. Joseph's had 24 cases. Their average  
10 charge was \$26,940. And let's see if I've got any  
11 others. Just a minute. That's all 520.

12 So I did not find any in Savannah -- any  
13 hospitals that reported 11 or more cases. The  
14 closest hospital we could find that reported at least  
15 11 cases was Medical University of South Carolina and  
16 Charleston. And for DRG 29 they had 14 cases and  
17 their average charge was \$79,307.

18 Q Okay. And where is the University of South  
19 Carolina hospital located, sir?

20 A I said Charleston, South Carolina.

21 Q Charleston.

22 All right. And do you consider that to be  
23 in the Savannah, Georgia area?

24 A Not necessarily, but it was the closest  
25 hospital that had at least 11 instances reporting.

1 Q Okay.

2 A We looked at --

3 Q You would agree that, you would agree that  
4 Charleston, South Carolina is two, two and a half  
5 hours away from Savannah?

6 A Depends on how you go. If you fly, it's  
7 not that far, not that much time. If you walk, it  
8 could be much longer.

9 Q How about if you drive it, sir?

10 A About two and a half hours, I guess.

11 Q Yeah.

12 So let's talk about DRG 250. Excuse me,  
13 DRG 520.

14 A Okay.

15 Q Show me where that appears in your report.

16 A I don't think we put that in the report.

17 Q I see.

18 A I don't see that.

19 Q Now, DRG 520 is a reference to back and  
20 neck procedures except spinal fusion, correct?

21 A That's correct.

22 Q Okay. It is not a reference to a spinal  
23 cord stimulator, is it?

24 A No.

25 Q Okay. And you can agree that different

1 procedures with different CPT codes or different DRG  
2 codes have different costs, correct?

3 A Yes.

4 Q Okay. Do you have any evidence that DRG  
5 520 -- that that code applies in any way to spinal  
6 cord stimulators?

7 A If I'm recalling correctly, I think that  
8 DRG 520 was identified in the Medtronic's  
9 publications as a DRG that is sometimes used for that  
10 device.

11 Q Well, let's go to Exhibit 72, please.

12 Can you show me where that DRG code comes  
13 up in that document; in the Medtronic document 72?

14 A Let's see. Yes.

15 Q Where is that, sir?

16 A Well, you don't have your pages  
17 sequentially numbered maybe. Or you do too. Okay.  
18 So look on page 12 -- I'm sorry, 13. In the bottom  
19 right-hand corner is the number of the page. About  
20 almost halfway down the page DRG 520 is identified.

21 Q It's right below DRG 519; is that correct?

22 A Correct.

23 Q And that is a subsection of medical  
24 procedures that are, quote, due to musculoskeletal  
25 disorders, correct?

1 A Yes.

2 Q Okay. Are you aware of whether Ms. Orr,  
3 Jackie Orr, has a musculoskeletal disorder?

4 A I don't know.

5 Q You don't know?

6 A No.

7 Q So you don't know --

8 A We --

9 Q Sir?

10 A We were looking for any instances in the  
11 database that would contain, that would contain the  
12 charges for a neurostimulator. And based upon this  
13 material from Medtronics, they identified six  
14 possible DRGs that could contain neurostimulators.  
15 And the -- there were no -- the ones that would be --  
16 that had any frequency were DRG 29 and DRG 520 in the  
17 AHD data --

18 Q Okay.

19 A -- in the AHD database.

20 Q Do you have any evidence that DRG 520  
21 applies to Jackie Orr in any way, shape or form?

22 A I don't know.

23 Q Okay. Now, if you look on page 13 right  
24 above this subsection of "due to musculoskeletal  
25 disorders" you'll see a subsection that says, "pain

1 disorder or due to causalgia or RSD." Do you see  
2 that, sir?

3 A Yes.

4 Q Do you know what RSD stands for?

5 A Not off the top of my head.

6 Q Stands for reflex sympathetic dystrophy.

7 Would it surprise you that that's what

8 Ms. Orr's been diagnosed with in this case?

9 A That sounds --

10 MS. RICHARDSON: Object to form.

11 THE WITNESS: -- familiar.

12 Q (By Mr. Kraeuter) Okay. Can we agree that  
13 the DRG 520 does not apply to Ms. Orr in this case?

14 MS. RICHARDSON: Object to the form.

15 THE WITNESS: I don't, I don't know. I  
16 would --

17 Q (By Mr. Kraeuter) Okay.

18 A I would agree that Medtronics includes it  
19 in the possible DRGs where their device would be  
20 used.

21 Q All right.

22 A I don't, I don't know.

23 Q Let me ask you this --

24 A It's a clinical question as far as her  
25 diagnosis. I'm not a clinician.

1 Q Let me ask it -- I'm sorry, sir.

2 Let me ask it this way: Can we agree, as  
3 you sit here today, that you don't know that DRG 520  
4 applies to Ms. Orr in this case?

5 MS. RICHARDSON: Object to the form.

6 THE WITNESS: I don't know.

7 Q (By Mr. Krauter) Okay. Have you told us all  
8 of the Medicare, VA, American Hospital Directory, PMIC,  
9 and Physicians' Fee Reference data that came from the  
10 Savannah, Georgia area?

11 MS. RICHARDSON: Scot, can you hang on one  
12 second? The, the building operator needs  
13 something. She's going to have to interrupt  
14 your video feed.

15 (Whereupon, a brief recess was taken.)

16 THE WITNESS: Have you read the question  
17 back, or somebody repeat it.

18 MR. KRAUTER: Yeah. Let's read it back,  
19 please.

20 (Whereupon, the court reporter read back  
21 the previous question on page 55, line 7.)

22 THE WITNESS: I think so.

23 Q (By Mr. Krauter) Okay. Now, did you perform  
24 an independent survey of the physicians, hospitals, and  
25 ambulatory surgery centers in the Savannah, Georgia

1 area to determine the reasonable charges in the  
2 Savannah, Georgia area for the types of treatment  
3 recommended?

4 A No. I did not survey individual  
5 facilities. We used the published sources that are  
6 described in the report.

7 Q Okay. Now, does Jackie Orr receive VA  
8 benefits, medical benefits?

9 A I don't know.

10 Q Does she receive Medicare benefits?

11 A I don't know.

12 Q Does she receive Medicaid benefits?

13 A I don't know.

14 Q Does she have private health insurance?

15 A I don't know.

16 Q Okay.

17 A And all those are irrelevant in terms of  
18 what charges are.

19 Q Well, private health insurance pays a  
20 different reimbursement rate than Medicare, correct?

21 A Payment and charges are two different  
22 things. Our report addresses billed charges.

23 Q I see.

24 So your testimony is that the data you've  
25 relied on is what various hospitals or physicians



1 have charged for various procedures as opposed to  
2 what they've received as reimbursement; is that  
3 correct?

4 A Yes. We're reporting primarily on the  
5 charges; gross charges.

6 Q Have you seen any of the patient repayment  
7 agreements that Optim Healthcare has in this case?

8 A I don't think so.

9 Q Now, let's look at your report, please.

10 A Okay.

11 Q At the top of page 2 it talks about your  
12 engagement in this case. And you were engaged to  
13 independently review the plaintiffs' projected  
14 medical charges?

15 A Yes.

16 Q So you were not asked to review her  
17 existing or past medical bills; is that correct?

18 A Correct.

19 Q Okay. And you have no opinion on the  
20 reasonableness of the past medical bills charged to  
21 Ms. Orr?

22 A I've not reviewed them, so I have no  
23 opinion.

24 Q So you have -- okay.

25 Now, let's talk about your findings in this

1 case; page 8 of your report.

2 MS. RICHARDSON: Scot, is this a good place  
3 to take a short break?

4 MR. KRAEUTER: Yeah, as long as it's short.  
5 I lost about a half hour with that document-  
6 production.

7 MS. RICHARDSON: Yeah. Just five minutes  
8 is all. Nothing --

9 MR. KRAEUTER: Okay.

10 MS. RICHARDSON: Just restroom break, if  
11 that's all right.

12 MR. KRAEUTER: Sure, sure.

13 (Whereupon, a brief recess was taken.)

14 Q (By Mr. Kraeuter) Now, doctor, we were  
15 looking at page 8 of your report when we took a break.  
16 And I want to call your attention to finding number one  
17 regarding the ganglion blocks.

18 A Yes.

19 Q Okay. And your opinion is that the 75th  
20 percentile UCR -- usual, customary, reasonable --  
21 charge in Savannah, Georgia is \$766. Do you see  
22 that, sir?

23 A Yes.

24 Q Okay. Now, any particular reason why you  
25 didn't use the 80 percent UCR or the 90 percent UCR?

1           A     Well, the PFR and PMIC databases that we  
2     used did not offer an 80th percentile option. They  
3     have the 50th, 75th, and 90th percentiles reported.

4           Q     Right.

5                     But they do offer a 90th percentile,  
6     correct?

7           A     Yes, they do.

8           Q     Okay. Any reason why you didn't use the  
9     90th percentile?

10          A     Basically the 75th percentile is the most  
11     commonly used threshold in the industry for purposes  
12     of establishing limits. 90th percentile is sometimes  
13     used -- or more frequently used in dental procedures,  
14     but for medical procedures I've seen 75th percentile  
15     more frequently used.

16          Q     And that's what the insurance companies  
17     will pay, correct?

18          A     Not necessarily.

19          Q     Are you saying that they'll pay more than  
20     the 75 percent UCR?

21          A     They could. It depends upon the agreement  
22     with the provider, if there is any. If there's no  
23     agreement with the provider, then it depends upon the  
24     insurance carrier's practices as to how they pay for  
25     out-of-network services. And sometimes in other

1 states it would depend upon state law.

2 Q Okay. So the reality when we talk about  
3 these ganglion blocks is you don't know what the  
4 doctors are actually getting paid in Savannah,  
5 Georgia for these blocks?

6 A For Medicare I do. Or I could.

7 Q Okay.

8 A I can determine. That is published.

9 Q But you didn't do that in this case?

10 A I didn't report on it in here. I reported  
11 on the charges.

12 Q Okay. And as we talked about, all your  
13 opinions are contained in your report.

14 Now, do you know if the charge of \$2,000  
15 per ganglion block is unreasonably high if Jackie Orr  
16 has them done in the Atlanta, Georgia area?

17 A Yeah. It would be unusually high in  
18 Atlanta also because the geographic factors between  
19 Savannah and Atlanta are not significantly different.

20 Q Now, how many hospitals, doctors, and  
21 ambulatory surgery centers in the Savannah, Georgia  
22 area were provided data to come up with this  
23 75 percent usual, reasonable, and customary amount?

24 A I don't know. You'd have to ask the  
25 publishers.

1           Q     Okay. Do you know if any of the data in  
2 either the PMIC or the Physicians' Fee Reference  
3 books and database for ganglion blocks came from  
4 Savannah, Georgia area?

5           A     Yes.

6           Q     Okay. But you don't know how much of it  
7 came from the Savannah, Georgia area?

8           A     Well, because both of those databases  
9 includes Medicare -- charges to Medicare patients are  
10 included in both of those databases, it would include  
11 all charges to Medicare patients made by providers in  
12 the Savannah area.

13          Q     All right. And do you know how many  
14 representative charges were taken from the Savannah,  
15 Georgia area by either PMIC or the Physicians' Fee  
16 Reference book to come up with this usual, customary,  
17 and reasonable number of \$766?

18               MS. RICHARDSON: Object to the form.

19               THE WITNESS: Well, all of them. All the  
20 Medicare claims are in that database.

21          Q     (By Mr. Kraeuter) Okay. Well, how many came  
22 from the Savannah, Georgia area, sir?

23          A     I don't know the precise number. It's tens  
24 of thousands, you know.

25          Q     Well --

1           A     It depends -- you know, there is -- it's  
2     possible to -- it may be possible to determine the  
3     specific number, but I don't know it. But it would  
4     be -- it's essentially all of the charges were  
5     Medicare patients reported -- or paid to providers in  
6     the Savannah area; not the payment amount, the charge  
7     amount.

8           Q     I understand that the PMIC and Physicians'  
9     Fee Reference books use data from Medicaid. I  
10    understand that whatever Medicaid data for ganglion  
11    blocks existed in Savannah, Georgia area would appear  
12    in those databases. I understand all that.

13                But my question to you is: How many actual  
14    charges or procedures from the Savannah, Georgia area  
15    for ganglion block shows up in that data; do you  
16    know?

17           A     I've already answered that question. I  
18    said I did not know the number.

19           Q     Okay.

20           A     But it's all of them.

21           Q     Okay. I just want to make sure we're  
22    clear.

23           A     Okay.

24           Q     Now, your next opinion is that Dr. Harben's  
25    projected charges for the Nucynta drug,

1 N-U-C-Y-N-T-A, are 37 percent higher than the  
2 projected charges for the same drug for  
3 Dr. Niederwanger. Do you see that, sir?

4 A Yes.

5 Q Okay. Do you know the milligram dosage  
6 that Dr. Harben was recommending?

7 A Let's see. Dr. Harben was recommending  
8 600 milligrams, and Dr. Niederwanger was recommending  
9 800 milligrams.

10 Q Are you sure you're looking at the Nucynta,  
11 sir?

12 A Oh, I'm sorry. Yeah. That was Gabapentin.  
13 Nucynta. Dr. Harben was recommending  
14 400 milligrams, and Niederwanger was recommending  
15 100 milligrams.

16 Q So we can agree that the dosage that  
17 Dr. Harben was recommending was 75 percent higher  
18 than Dr. Niederwanger?

19 A It's four times higher.

20 Q In percentage terms, isn't that 75 percent?

21 A I don't think so.

22 Q Well, 100 is 25 percent of 400, is it not?

23 A Let me -- just a minute.

24 You're asking what the ratio of 400 is to  
25 100?

1 Q Mm-hmm. Yes.

2 A It's four to one.

3 Q Okay. If I take a hundred and I divide it  
4 by 400, it's .25, is it not?

5 A Yes.

6 Q It's 25 percent, right?

7 A One hundred is 25 percent of 400. I would  
8 agree with that.

9 Q Okay. So Harben's dosage is 75 percent  
10 higher, is it not?

11 A No. That's not how math works.

12 Q Okay. Do you think it's unreasonable that  
13 Dr. Harben's charge for -- or projected charge for  
14 Nucynta at 400 milligrams would be 37 percent more  
15 expensive than Dr. Niederwanger's, but it's that much  
16 stronger? Do you think that's unreasonable?

17 A I'm calculating this on a per milligram  
18 basis. On a per milligram basis, Dr. Harben is at  
19 8.167 cents per milligram. Dr. Niederwanger is at  
20 5.967 cents per milligram. The difference between  
21 those two is 37 percent. Dr. Harben is 37 percent  
22 higher per milligram than Dr. Niederwanger.

23 Q Okay. Let's talk about your opinion on  
24 Gabapentin.

25 A Okay.



1           Q     You're critical of Dr. Harben's projected  
2     charge of \$55 for a 30-day supply of Gabapentin; is  
3     that correct?

4           A     Well, it's not -- it is significantly  
5     higher than what I see as prices quoted by  
6     GoodRX.com.

7           Q     Okay.

8           A     About twice --

9           Q     And --

10          A     -- too much.

11          Q     So you went onto GoodRX.com website to come  
12     up with the cost for Gabapentin; is that correct?

13          A     That's correct.

14          Q     Did you use any other source of information  
15     to come up with your opinion on the reasonableness of  
16     Gabapentin charges with Dr. Harben?

17          A     I don't think so.

18          Q     Okay. Let's take a look at Exhibit 71.

19          A     Okay.

20          Q     All right. Is this the GoodRX website  
21     you're talking about?

22          A     That is from the GoodRX website.

23          Q     Okay. And the dosage that Dr. Harben was  
24     recommending was a 600-milligram dosage; is that  
25     correct?

1 A Yes.

2 Q Okay. Does the GoodRX website have numbers  
3 for 600 milligrams of Gabapentin?

4 A Umm.

5 Q For the cost of 600 milligrams?

6 A Hang on just a minute. Let me pull up my  
7 copy cause the copy that I referenced is in the  
8 printouts.

9 Yes, they do.

10 Q They do?

11 A They do.

12 Q Okay. I mean, I'll tell you I looked at it  
13 and they didn't have an entry for 600 milligrams.  
14 They had 100, 300 and 400.

15 A I've got it at 600 milligrams, 60 tabs per  
16 prescription.

17 Q And you got off that -- that off the GoodRX  
18 website?

19 A Yeah. I've got a screenshot in the  
20 printouts.

21 Q And that's going to be in the material that  
22 you're giving me?

23 A Yes.

24 Q Okay.

25 A As well as 800 milligrams.

1           Q     Now, going to finding number five regarding  
2     the ambulatory surgery center charges for trial  
3     spinal cord stimulators --

4           A     Yes.

5           Q     -- do you see that, sir?

6           A     I do.

7           Q     And you used an 80 percentile usual,  
8     customary, reasonable charge; is that correct?

9           A     That's correct.

10          Q     Any reason why you wouldn't use a 75  
11     percent usual and reasonable, customary charge?

12          A     The -- yes, there is.

13          Q     And what is the reason for that, sir?

14          A     That data is not provided at any percentile  
15     other than the 80th.

16          Q     Other than who, sir?

17          A     Other than the 80th percentile. That's the  
18     only percentile that's published.

19          Q     And where did you get that information  
20     from; the 80th percentile UCR?

21          A     The Veterans Administration's reasonable  
22     charge database.

23          Q     Okay. Do you know if any of the data for  
24     the VA database came from the Savannah, Georgia area?

25          A     I believe it did, but let me see here.

1           You got in your exhibit stack one of the  
2 listings of sources from the VA database. Can you  
3 point me to where that is? I saw it earlier.

4           Okay. Let's look at your Exhibit 79. Just  
5 one second and I'll look it up.

6           Q     Sure.

7           A     Yes. It would include facilities in the  
8 Savannah area.

9           Q     And what are you looking at, sir?

10          A     What's been labeled Plaintiffs' Exhibit 79.

11          Q     And where do you find that, sir?

12          A     About a third of the page down, "charge  
13 type, OPT." That means outpatient; refers to the  
14 outpatient facility database. And what the VA is  
15 reporting here, that their data source is the  
16 Medicare APC payment amount, OPPS data file for  
17 calendar year 2016. And that's a hundred percent --

18          Q     Okay.

19          A     -- data file of all charges to Medicare  
20 patients by outpatient facilities. And that would  
21 naturally include any Medicare patients in the  
22 Savannah area as well as the whole country, but it  
23 includes Savannah.

24          Q     How many, how many data entries for the VA  
25 database came from the Savannah, Georgia area?

1           A     I don't know.

2           Q     Okay.

3           A     But it would be all of them.

4           Q     Which all could be anywhere from zero to

5     infinity, correct?

6           A     Theoretically, yes.

7           Q     I mean, this is kind of like with the DRG

8     029 we talked about earlier. You couldn't find a DRG

9     029 entry for spinal cord stimulators closer than

10    Charleston, South Carolina, correct?

11          A     No. That's not true. There are no

12    hospitals that reported 11 or more of that DRG.

13          Q     Okay.

14          A     There are hospitals that reported less than

15    that all over Georgia.

16          Q     But not in Savannah, Georgia?

17          A     Well, "all over Georgia" includes Savannah,

18    I think.

19          Q     Well, in all your data, sir, show me one

20    hospital in Savannah, Georgia that reported a DRG 029

21    in your research. Pull your records. Show me.

22          A     I don't have it in my file.

23          Q     Because it doesn't exist.

24          A     There's no hospital --

25                MS. RICHARDSON: Object to the form.

1 THE WITNESS: -- that reported more than

2 11.

3 Q (By Mr. Kraeuter) And you're not aware of --

4 A If there --

5 Q -- any hospital -- excuse me. Let me  
6 finish.

7 You're not aware of any hospital in  
8 Savannah, Georgia that reported a DRG 029 procedure  
9 in your research. Cause if you had, you'd show it to  
10 me.

11 A That's correct.

12 Q Okay.

13 A But I can tell you it did report on the  
14 average charge for all hospitals in Georgia of which  
15 there's 87 cases. And I believe that it's highly  
16 likely that at least one of those is from Savannah,  
17 but I can't prove that.

18 Q And you're basically guessing when you say  
19 that?

20 A No. I'm just thinking about --

21 MS. RICHARDSON: Object to the form.

22 THE WITNESS: -- distribution of population  
23 throughout the state. I think that --

24 Q (By Mr. Kraeuter) You --

25 A -- Savannah represents more than 1/87th of

1 the total population of the state when it comes to  
2 Medicare beneficiaries.

3 MR. KRAEUTER: I'm going to move to strike  
4 those answers as speculative.

5 Q (By Mr. Kraeuter) Because, really,  
6 Mr. Blount, that's what you're doing right now. You're  
7 speculating. You don't know for a fact that any of  
8 those DRG 029 entries came from one of the three  
9 Savannah, Georgia hospitals: Memorial Medical Center,  
10 St. Joseph's, or Candler?

11 MS. RICHARDSON: Object to the form.

12 Q (By Mr. Kraeuter) Answer the question, sir.

13 A What was -- it sounded like you were making  
14 a statement.

15 Q No. It was a question.

16 A Okay.

17 Q Please answer.

18 A I don't, I don't know of any particular  
19 hospital volume in Savannah for this DRG.

20 Q Okay.

21 A But I do know --

22 Q Now, you --

23 A I do know the statewide average.

24 Q Okay. Now, you have stated in your report  
25 that Congress has charged the VA to establish charges

1 that are 80 percent of the community charges. Do you  
2 recall that part of your report?

3 A Yes.

4 Q Okay. And that means that community  
5 charges are actually 20 percent more than the VA  
6 charges?

7 A No.

8 Q "No"?

9 Okay. Do you know any hospital in Georgia  
10 that uses the VA hospital data to determine usual,  
11 customary, and reasonable charges other than VA  
12 hospitals?

13 A Not that I know of. But I don't know what  
14 most hospitals use for their basis for charges.

15 Q Okay. Same question for ambulatory  
16 surgical centers.

17 A The same answer.

18 Q You don't know what ambulatory surgical  
19 centers use as the basis of their charges or to form  
20 their charges; isn't that correct?

21 A No. And their basis for the charges is  
22 irrelevant. What's important is that the VA database  
23 includes whatever they are charging regardless of how  
24 they calculated it or whether or not they even have a  
25 basis for it. They could be picking random numbers



1 for all I know, but it's still what they charge.

2 Q Do you know if any of the physicians  
3 involved in this case or any of the ambulatory  
4 surgical centers involved in this case even accept VA  
5 patients?

6 A No. And it's not relevant because the VA  
7 database is based -- is a determination of rates  
8 from -- that other facilities charge. It's not for  
9 VA -- the VA uses it to set their rates, but the  
10 basis for their information is -- are all the charges  
11 for all other types of providers.

12 Q Now, we can agree that doctors, hospitals,  
13 ambulatory surgery centers are not required by law to  
14 accept VA patients, are they?

15 A I don't know. I've never researched that.

16 Q Okay. You're not here to suggest that any  
17 of the physicians or surgery centers involved in this  
18 case are required to use the VA database when setting  
19 charges and fees?

20 A VA facilities are.

21 Q Excuse me?

22 A VA facilities are required by law to use  
23 this database.

24 Q Are you aware whether Ms. Orr is going to  
25 have her procedures done at a VA facility, sir? Do

1     you even know that?

2           A     I don't know.

3           Q     Okay. Is a private physician at a private  
4     surgery center required to use VA database in setting  
5     its charges?

6           A     Private facilities are not required to use  
7     any database that I know of.

8           Q     And you're not here to say that the VA  
9     database is the only way to determine reasonableness  
10    of fees and charges for medical services, are you?

11          A     No.

12          Q     Now, let's take a look at Exhibit 73,  
13    please. Can you identify this, sir?

14          A     I haven't found it yet.

15                 Okay. I've got it now.

16          Q     Okay.

17          A     Yes.

18          Q     Please identify it.

19          A     Looks like a screenshot from the VA website  
20    where the databases are available in PDF format.

21          Q     And is that where you got your information,  
22    sir?

23          A     Yes.

24          Q     Okay. Why don't we turn to page 4 of that  
25    document, please.